

Message Text

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ACTION L-03

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O R 230800Z JAN 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 5052
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USBERLIN
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 04 BONN 01200

L FOR AMBASSADOR KEARNEY, L/EUR AND L/C

E.O. 11652: XGDS 1 AND 3
TAGS: CPRS, ACLM, GW, GE, FR, UK, US
SUBJECT: ALLIED POLICY VIS-A-VIS FRG CONCERNING
CLAIMS AGAINST GDR AND PRE-1945 REICH DEBTS

REFS: (A) 73 PARIS 935
(B) 73 PARIS 923
(C) 73 BONN 737
(D) 73 STATE 9230

BEGIN SUMMARY: THE BRITISH EMBASSY BY LETTER TO THE
US AND FRENCH EMBASSIES HAS ASKED FOR INFORMATION
ON WHAT WAS AGREED AT THE DISCUSSIONS BETWEEN THE
BRITISH, FRENCH AND AMERICANS IN PARIS ON JANUARY 11-12,
1973 CONCERNING THE ALLIED POSITION ON THE MAKING OF
CLAIMS AGAINST THE GDR FOR PRE-1945 REICH DEBTS. THE
UK EMBASSY SEEKS THIS INFORMATION PRIOR TO UK-GDR
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CLAIMS DISCUSSIONS SCHEDULED FOR FEBRUARY 1978.
EMBASSY EXAMINATION OF ITS FILES ON 1973 PARIS MEETING
SEEM TO INDICATE THAT THE THREE POWERS AGREED AD
REFERENDUM TO ASK THE GDR QUOTE TO ACCEPT THE OPENING OF
NEGOTIATIONS WITH THE VIEW OF REGULATING THE DEBTS,
PUBLIC OR PRIVATE, OF THE FORMER REICH, OF LOCAL INSTRU-
MENTALITIES AND OF PRIVATE PERSONS RESIDENT ON THE

PRESENT TERRITORY OF THE GDR. UNQUOTE IT APPEARS, HOWEVER, THAT THE GERMANS SUCCESSFULLY OBJECTED IN THE BONN GROUP TO CERTAIN PROVISIONS OF A DRAFT PAPER FOR NATO THAT SUMMARIZED THE ALLIED CLAIMS GOALS, AS RELEVANT TO THE QUESTION OF "GERMANY" AND OF FUNDAMENTAL IMPORTANCE FOR THE FRG.. END SUMMARY

1. BY LETTER DATED SEPTEMBER 20, 1977, THE UK EMBASSY'S LEGAL ADVISER (CHAMBERLAIN) QUERIED HIS US AND FRENCH EMBASSY COUNTERPARTS ABOUT ALLIED POLICY ON GDR OBLIGATIONS FOR PRE-1945 DEBTS OF THE GERMAN REICH. COPIES OF THIS LETTER WERE LEFT BY THE EMBASSY'S LEGAL ADVISER (PFUND) IN LATE SEPTEMBER WITH L/C, L/EUR AND POSSIBLY EUR/CE, WITH A REQUEST FOR DEPARTMENT GUIDANCE.

2. THE LETTER REFERS TO THE FACT THAT THE SWISS GOVERNMENT HAS COMPLETED THE REGISTRATION OF CLAIMS AGAINST THE GDR CONCERNING PRE-1945 EXTERNAL REICH DEBTS AND INTENDS TO RAISE THESE IN FORTHCOMING SWISS-GDR CLAIMS NEGOTIATIONS. WHILE THE DEBTS IN QUESTION ARISE PRIMARILY FROM EXTERNAL BONDS FOR WHICH PAYMENTS HAVE NOT ALREADY BEEN MADE BY THE FRG FOLLOWING THE 1953 LONDON DEBT AGREEMENT (LDA) OF FEBRUARY 27, 1953, THE SWISS MAY ALSO SEEK SETTLEMENT OF OUTSTANDING EXTERNAL DEBTS OWED BY PUBLIC AUTHORITIES, COMPANIES AND PRIVATE INDIVIDUALS IN TERRITORY THAT HAS NOW CONFIDENTIAL

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BECOME THE GDR.

3. THE LETTER REVIEWS THE HISTORY OF THIS QUESTION, INCLUDING THE PREAMBLE TO THE LDA, WHICH STATES THAT THE MARCH 6, 1951 EXCHANGE OF LETTERS BETWEEN THE ALLIES AND THE FRG CONSTITUTED THE BASIS ON WHICH THE LDA WAS ESTABLISHED. IN ARTICLE I OF THE ADENAUER LETTER OF MARCH 6, 1951, THE FRG CONFIRMED ITS LIABILITY FOR THE PRE-WAR EXTERNAL DEBTS OF THE GERMAN REICH. HOWEVER, THE ARTICLE ALSO PROVIDES THAT IN THE MANNER AND EXTENT TO WHICH THE FRG FULFILLS THIS LIABILITY, ACCOUNT WILL BE TAKEN OF THE FRG'S SITUATION, INCLUDING THE EFFECT OF THE LIMITATIONS ON ITS TERRITORIAL JURISDICTION AND ITS CAPACITY TO PAY. THE UK EMBASSY LETTER STATES THAT THE THREE ALLIED HIGH COMMISSIONERS CONFIRMED THE ADENAUER LETTER UNDERSTANDING.

4. THE LIABILITY OF THE FRG FOR THE REICH DEBTS WAS APPARENTLY ACCORDINGLY SCALED DOWN, PROBABLY BY ONE-THIRD.

5. THE UK EMBASSY LETTER STATES THAT THREE PRINCIPAL

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POINTS APPEAR TO EMERGE: (A) THE LDA DID NOT CONSTITUTE
A FULL SETTLEMENT OF REICH DEBTS; (B) THE FRG
ACCEPTED LIABILITY FOR ALL OF THE REICH DEBTS; AND (C)
THE THREE WESTERN ALLIES AGREED TO DEAL WITH THIS
MATTER ON A MULTILATERAL BASIS.

6. REFERRING TO B IN THE PREVIOUS PARAGRAPH, THE UK
EMBASSY LETTER EXPRESSES THE VIEW THAT THIS POINT
RELATES TO A FUNDAMENTAL ASPECT OF THE GERMAN PROBLEM.
IN THE FRG-GDR BASIC RELATIONS TREATY OF DECEMBER 21,
1972, BOTH STATES ACKNOWLEDGED THE PRINCIPLE THAT THE
JURISDICTION OF EACH WAS CONFINED TO ITS OWN TERRITORY;
NEVERTHELESS, THE FUNDAMENTAL FRG POSITION IS THAT THE
FRG AND THE GDR ARE NOT SUCCESSOR STATES TO THE REICH BUT
RATHER THAT THE REICH CONTINUES, ALTHOUGH ITS STATE
STRUCTURE HAS BEEN ORGANIZED INTO THE TWO GERMAN STATES.
NOTWITHSTANDING THE VARIOUS PROVISIONS OF THE BASIC
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RELATIONS TREATY, THE FRG STILL REGARDS ITSELF AS HAVING A SPECIAL RESPONSIBILITY FOR REPRESENTATION OF THE REICH. THE UK EMBASSY LETTER STATES THAT ACCORDINGLY AN ATTEMPT TO MAKE A CLAIM WITH RESPECT TO REICH DEBTS AGAINST THE GDR COULD BE REGARDED BY THE FRG NOT SO MUCH AS CONTRARY TO THE LDA BUT AS CONTRARY TO AN AGREEMENT OR PRIOR UNDERSTANDING THAT REMAINS FOR THEM OF GREAT IMPORTANCE AND WHICH ACKNOWLEDGES THE POSITION OF THE FRG AS REPRESENTING THE REICH. HOW THE FRG WOULD REACT IS RECOGNIZED IN THE UK EMBASSY LETTER TO BE A MATTER FOR POLITICAL ASSESSMENT.

7. THE LETTER CONTINUES THAT FOLLOWING RECOGNITION OF THE GDR DECEMBER 1972, THE THREE ALLIES MET IN PARIS JANUARY 11-12, 1973 TO DISCUSS THEIR FUTURE BILATERAL RELATIONS WITH THE GDR -- AND ATTEMPT TO COORDINATE THE BROAD OUTLINES OF THEIR POLICY. NEITHER THE FRG NOR THE ALLIED EMBASSIES IN BONN WERE REPRESENTED AT THAT MEETING. UNFORTUNATELY, THE UK FCO APPEARS NOT TO HAVE A FULL RECORD OF THE MEETING AND THE REPORTING TELEGRAM IS AMBIGUOUS ABOUT ANY DECISION REACHED ON REICH DEBTS. THE LETTER STATES, HOWEVER, THAT THOSE WHO ATTENDED THE MEETING RECALLED THAT IT WAS AGREED THAT DEBTS COVERED BY THE LDA WOULD NOT REPEAT NOT BE A MATTER FOR BILATERAL DISCUSSION WITH THE GDR ALTHOUGH CLAIMS IN GENERAL WERE TO BE COVERED BY BILATERAL NEGOTIATIONS. THE LETTER STATES THAT THE UK HAS MADE IT CLEAR TO THE GDR IN SUBSEQUENT BILATERAL DISCUSSIONS THAT THE UK DOES NOT REGARD THE SETTLEMENT OF PRE-1945 REICH DEBTS AS A MATTER FOR BILATERAL UK-GDR DISCUSSIONS.

8. FINALLY, THE UK EMBASSY LETTER STATES THAT THE LETTER'S PURPOSE IS TO DETERMINE WHETHER THE US AND CONFIDENTIAL

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FRENCH AUTHORITIES HAVE GIVEN ANY RECENT THOUGHT TO THE QUESTION OF HOW THE ALLIES SHOULD PROCEED WITH RESPECT TO CLAIMS AGAINST THE GDR FOR PRE-1945 REICH DEBTS. IT ALSO ASKS FOR CLARIFICATION AS TO WHAT WAS AGREED CONCERNING THIS MATTER AT THE JANUARY 1973 PARIS MEETING OF THE ALLIES.

9. THE EMBASSY HAS EXAMINED ITS FILES AND IN REFTEL A HAS FOUND A REPORT DATED JANUARY 13, 1973 ON THE TRI-PARTITE TALKS JANUARY 11-12 IN PARIS. THE REPORT CONTAINS AN INFORMAL TRANSLATION OF THE TEXT AGREED UPON AD REFERENDUM. SECTION D OF THAT TEXT IS ENTITLED

"DEBTS OF THE REICH AND LOCAL INSTRUMENTALITIES WITHIN THE GDR". THE TEXT OF THAT SECTION READS AS FOLLOWS:

BEGIN TEXT

THE THREE POWERS WILL ASK THE GDR TO ACCEPT THE OPENING OF NEGOTIATIONS WITH THE VIEW OF REGULATING THE DEBTS, PUBLIC OR PRIVATE OF THE FORMER REICH, OF LOCAL INSTRUMENTALITIES AND OF PRIVATE PERSONS RESIDENT ON THE PRESENT TERRITORY OF THE GDR.

IT IS AGREED AMONG THE THREE POWERS THAT IN WHAT CONCERNS THE DEBTS OF THE FORMER REICH THE AMOUNT ASSUMED BY THE GDR OUGHT IN NO CASE TO EXCEED THE ABATEMENT GRANTED TO THE FRG IN VIEW OF THE DIVISION OF GERMANY.

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IN WHAT CONCERNS THE DEBTS OF LOCAL INSTRUMENTALITIES WITHIN THE GDR THE SERVICE OF LOANS WILL BE TAKEN UP IN THE FRAMEWORK OF AGREEMENTS TO BE NEGOTIATED BETWEEN DEBTORS AND CREDITORS.

END TEXT

THE TEXT ALSO CONTAINED PROVISIONS ON THE RESTITUTION OF GOODS EXISTING IN THE GDR ON SEPTEMBER 1939, GOODS, RIGHTS AND INTERESTS PLUNDERED DURING HOSTILITIES, AND LANGUAGE ON REPARATIONS, THE RENUNCIATION OF ALL CLAIMS AND THE INDEMNIFICATION OF NAZI VICTIMS.

10. PARA 8 OF REFTTEL A STATES THAT WHILE THE DELEGATIONS AGREED THAT PRE-WAR EXTERNAL DEBTS WOULD BE A CONFIDENTIAL

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PROPER SUBJECT TO RAISE WITH THE GDR, NO AGREEMENT WAS REACHED ON WHICH DEBTS SHOULD BE EMPHASIZED. THE FRENCH INDICATED INTEREST IN SEEKING TO OBTAIN THOSE ELEMENTS OF REICH DEBTS NOT SOUGHT FROM THE FRG AS THE FRG DID NOT HAVE ACCESS TO ASSETS IN THE TERRITORY OF THE GDR. THE BRITISH AND US DELEGATIONS, WHILE AGREEING THAT IT WAS POSSIBLE THAT REICH DEBTS MIGHT BE RAISED, WERE REPORTED TO HAVE EXPRESSED RESERVATIONS AS SUCH A COURSE MIGHT IMPLY THAT THE CONDITION PRECEDENT SET FORTH IN THE 1953 LDA (I.E. REUNIFICATION) HAD BEEN GIVEN UP AND THAT THE ALLIES WERE NEGOTIATING FINAL SETTLEMENT OF THE GERMAN QUESTION.

11. REFTTEL B CONTAINS THE REVISED TEXT OF A PAPER FOR NATO WHICH, IN A SECTION ON "CLAIMS AND OTHER FINANCIAL MATTERS" STATES THAT IT WOULD BE DESIRABLE FOR AGREEMENT TO BE REACHED THAT SPECIFIED AREAS, IN WHICH EACH GOVERNMENT WOULD REPRESENT THE INTERESTS OF ITS NATIONALS, COULD BE COVERED BY SUBSEQUENT NEGOTIATIONS WITH THE GDR. THE SPECIFIED AREAS INCLUDED PUBLIC AND PRIVATE PRE-1945 GERMAN DEBTS, AS WELL AS PROPERTY LOOTED FROM ALLIED COUNTRIES DURING WWII WHICH MIGHT BE LOCATED IN THE GDR, AND WAR DAMAGE LOSSES INCURRED BY ALLIED NATIONAL PROPERTY OWNERS DURING WWII.

12. REFTTEL C REPORTS THAT AT A BONN GROUP DISCUSSION JANUARY 16, 1973, THE FRG REP (BLECH) STRONGLY OBJECTED TO THE SECTION OF THE PROPOSED PAPER ON CLAIMS AND OTHER FINANCIAL MATTERS, INTER ALIA AS THE QUESTION OF CLAIMS POSED "FUNDAMENTAL LEGAL PROBLEMS BECAUSE OF THEIR RELEVANCE TO THE QUESTION OF 'GERMANY'." BLECH WAS SUPPORTED BY THE FRENCH REP (LUSTIG) IN MAINTAINING THAT THE QUESTIONS TOUCHED ON IN THE CLAIMS SECTION CONFIDENTIAL

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"WERE OF FUNDAMENTAL IMPORTANCE FOR THE FRG AND MUST BE
CONSIDERED CAREFULLY WITHIN THE FRG GOVERNMENT." THE
CHANGES TO THE SECTION ON CLAIMS AND OTHER FINANCIAL
MATTERS FINALLY AGREED TO BY THE FRG REPS AT THE
JANUARY 16 BONN GROUP MEETING MADE THE TEXT THEREUPON
RECOMMENDED BY EMBASSY BONN FOR DEPARTMENT APPROVAL
ANODYNE AND MUCH LESS SPECIFIC THAN THE EARLIER DRAFT.
BY REFTEL D THE STATE DEPARTMENT STATED THAT IT HAD
NO OBJECTION TO THE DELIVERY OF THE PAPER IN THE
AMENDED FORM PROPOSED IN REFTEL C.

13. FROM THE ABOVE IT APPEARS THAT THE RECOLLECTION OF

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THE BRITISH OFFICIALS AS TO WHAT WAS AGREED AD REFEREN-
DUM IN PARIS IS INCORRECT. THE EMBASSY DOES NOT,
HOWEVER, KNOW WHETHER THE TEXT AGREED AT
PARIS AD REF RECEIVED FINAL APPROVAL FROM ALL CAPITALS.
IN ANY EVENT, IT SEEMS CERTAIN THAT ALREADY THE PROPOSAL

TO SUMMARIZE FOR NATO THE AGREEMENT REACHED WITH RESPECT TO PRE-1945 REICH DEBTS WAS CONSIDERED BY THE FRG TO BE A SENSITIVE MATTER. THE EMBASSY DOES NOT KNOW WHETHER THERE HAVE BEEN ANY FURTHER DISCUSSIONS WITH THE GERMANS CONCERNING IMPLEMENTATION OF THE JANUARY 1973 TRIPARTITE AGREEMENT INsofar AS THE MAKING OF CLAIMS AGAINST THE GDR FOR PRE-1945 REICH DEBTS IS CONCERNED.

1 WE HAVE AN INFORMAL INDICATION FROM THE UK EMBASSY THAT THE UK EMBASSIES IN PARIS AND WASHINGTON MAY BE INSTRUCTED TO RAISE WITH THE QUAI AND THE STATE
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DEPARTMENT THE QUESTIONS CONTAINED IN THE UK EMBASSY LETTER.

15. ACTION REQUESTED: DEPARTMENT GUIDANCE WHETHER THE AD REF AGREEMENT REPORTED IN REFTEL A REPRESENTS THE MOST DEFINITIVE RECORD AND THE FINAL FORM OF THE TRIPARTITE AGREEMENT REACHED AT PARIS IN JANUARY 1973. THE EMBASSY ALSO REQUESTS GUIDANCE ASAP WHETHER THE DEPARTMENT HAS RECENTLY CONSIDERED HOW THE US OR THE ALLIES SHOULD PROCEED WITH RESPECT TO CLAIMS AGAINST THE GDR FOR PRE-1945 REICH DEBTS, AND WHAT VIEWS ON THIS QUESTION THE EMBASSY SHOULD CONVEY TO THE UK EMBASSY AS THE CURRENT US POSITION BOTH CONCERNING US ACTIONS AND THE MANNER IN WHICH THE UK SHOULD HANDLE THIS ISSUE IN THE UPCOMING UK-GDR NEGOTIATIONS IN FEBRUARY.
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